IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 2466 of 1996

BHAGWAN SINGH & ORS
V/S
STATE & ORS

Mr. HSS KHARLIA, for the appellant / petitioner

Date of Order : 19.8.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

From the perusal of record, it transpires that the land in question was allotted as a strip of land to the predecessor of the private respondents, being Shri Vishwanath on 25.10.88. It is, thereafter, that the petitioner applied for the land, being allotted to him, laying a claim on the basis of being entitled to have the land allotted. Vide order, Annexure-1, dt. 21.12.98, the Allotting Authority cancelled the allotment of Vishwanath, and allotted it to the petitioner no.1, which order has been set aside by the impugned order of the Board of Revenue.

It has been found by the Board of Revenue that without appeal, or review petition, the Assistant Commissioner (Colonization) could not cancel the allotment, made in favour of Vishwanath, and thus, the cancellation is illegal, and the subsequent allotment, purportedly made in favour of the petitioner, cannot be sustained.

It is sought to be contended by the learned counsel for the petitioner that under Rule 21 of the Rajasthan Colonisation (Allotment and Sale of Government Land in the Indira Gandhi Canal Colony Area) Rules, 1975, the allotment, made in favour of Vishwanath, was liable to be cancelled, as the petitioner has a priority right of allotment of land, being the tenant of adjoining land, while according to him, Vishwanath was not the tenant of adjoining land.

I may gainfully quote the provisions of Rule 21, which read as under:

> “R.21. Cancellation of Allotment.- If at any time it is discovered that any allotment of Government land was made under these rules upon an incorrect statement of facts made in the application or in the affidavit or any other document produced by an allottee, the Allotting Authority, may order cancellation of such allotment and may also order re-entry upon and taking possession of the land without payment of any compensation.:
> Provided that no such order shall be made without giving the person, likely to be affected thereby, an opportunity of being heard.”

It is not shown to me, either from the order (Annex.1), or from any other material that, either the allotment was made upon any incorrect statement of fact made in the application, or in the affidavit, or any other document, produced by the allottee, nor has it been shown that Annexure-1 proceeds on any of these grounds. Admittedly, no appeal, revision, or review petition was filed by the petitioners, rather the petitioner has only filed an application for allotting the land to himself. As appears from Annexure-3, that the said application was dated 28.10.88, while the learned counsel for the petitioner informs that the said application was dated 7.11.88. Be that as it may, in either case, as on that date, the land already stood allotted to Vishwanath, and that being the position, within the meaning of Rule 14(1), as on the date of the petitioners filing application, the land no more remained “government land”, capable of being allotted to the petitioner, as it had already stood allotted.

I may further quote the provisions of Rule 14 (1) & (2), which read as under:

> “(1) Notwithstanding anything to the contrary contained in these rules, small patch of Government land may be allotted, to a tenure tenant whose tenure land adjoins such patch, subject to the celling area at [double the reserve price] for land of a similar soil class in the neighbourbood.
>
> [“Provided that if the tenant of the adjoining land fails to apply the allotment of small patch, the Allotting Authority shall make arrangement for making allotment of such small patch to the tenure tenants of the same chek or of the adjoining chak.”
>
> (2)”In case more than one tenants apply for allotment of same small patch, allotment shall be made by auction and it shall be alloted to the highest bidder.”]

In view of the above situation, learned counsel submits that before making allotment to Vishwanath, no notice was given to the petitioner, I do not find any authority to support the proposition that even if the tenant of the adjoining land does not apply, still when the authority proceeds to make allotment in favour of other persons in view of the powers vesting under the Allotting Authority under proviso to Rule 14(1), he is required to give notice to all other persons, who may have right to lay any claim for allotment, notwithstanding their having not filed any application for allotment of the land.

May be that the petitioner might have a genuine feeling that the allotment made in favour of Vishwanath was wrong, or the petitioner had a better right of allotment, but then, admittedly, till the land was allotted to Vishwanath, the petitioner has not ever moved any application for allotment, and according to Proviso to Rule 14(1), when the tenant of the adjoining land fails to apply for allotment, it is

always open to the Allotting Authority to make arrangements for making allotment of such small patch to other persons, mentioned therein.

In that view of the matter, I do not find any force in the writ petition. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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